

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1001 OF 2004

M/s. Marathe Engineering Industries ..Appellant

Vs.

Maharashtra State Finance Corp. and ors. ..Respondents

Mr. A.M. Kulkarni for the appellant.
Mr. S.S. Patwardhan for Respondent No.2.

CORAM: B.H. MARLAPALLE, J.

Date : June 13, 2005.

P.C.:

1. Heard Mr. Kulkarni, the learned counsel for the appellant who filed Special Civil Suit No.213 of 2000 along with an application at Exh.5 for injunction. The said application has been rejected by the learned Civil Judge, Senior Division at Sangli vide the impugned order dated 14/9/2004.

2. The plaintiff was placed under rehabilitation since 20/11/1987. The respondent no.1 i.e. Maharashtra State Finance Corporation agreed to provide the necessary margin money as working capital

in the form of long term loan and for acquiring equipments on concessional interest at the rate of 10% per annum. The loan was sanctioned and cheque bearing No.642689 dated 28/3/1990 for an amount of Rs.10,01,723/- was released through the defendant no.2-Bank which was appointed as the monitoring agent. The plaintiff became a defaulter as it could not pay the loan instalments for almost 10 years. The respondent no.1, therefore, issued a notice dated 1/8/2000 under Section 29 of the State Financial Corporations Act. The said notice was challenged by the present appellant in Special Civil Suit No.213 of 2000.

3. The defendant no.1 in its say Exh.90 pointed out that in all three types of loans were advanced to the plaintiff under different heads and the total amount to be recovered from the plaintiff against these loans came to Rs.1,11,036/-, Rs.26,26,807/- and Rs.23,79,112 as on 31/7/2000 and, therefore, the impugned notice was issued to take over the property under Section 29 of the Act. It was contended by the plaintiff that the defendant no.2-Bank adjusted the

loan amount sanctioned by defendant no.1 contrary to the tri-partite agreement on its own and, therefore, it was not on account of any fault of the plaintiff that the loan repayments could not be made. The defendant no.2 appeared and filed say and submitted that the allegations made by the plaintiff were false.

4. The trial court, therefore, held that the action of the respondent no.1 did not suffer from any malice and it had exercised its statutory right under Section 29, by referring to the decisions in the case of U.P. Financial Corporation Vs. M/s. Gem Cap (India) Pvt. Ltd. and others reported in A.I.R. 1993 SC 1435 as well as Maheschandra Vs. Regional Manager Utter Pradesh Financial Corporation and others reported in A.I.R. 1993 SC 935. The trial court held that there was no prima facie case made out by the plaintiff to issue an order of injunction restraining the defendant no.1 from acting on the notice dated 1/8/2000.

5. The learned counsel for the appellant referred to yet another decision in the case of **Haryana**

Financial Corporation and anr. vs. Jagdamba Oil Mills and anr. reported in (2002) 3 SCC 496. In the said case also it has been held that unless the action of the State Financial Corporation is mala fide, even a wrong decision by it is not open to challenge and it is not for the courts or a third party to substitute its decision. It was further observed that the scope to interfere under Section 29 of the Act by way of judicial review while entertaining the Writ Petition was limited only on either of the grounds viz. (a) where there is statutory violation on the part of the State Financial Corporation or (b) where State Financial Corporation acts unfairly i.e. unreasonably.

6. Under such circumstances, the reasoning given by the trial court in rejecting the application at Exh.5 cannot be termed to be patently erroneous so as to call for interference by entertaining this appeal.

7. Hence, the appeal fails at the threshold and it is hereby dismissed in limine. Ad-interim order granted earlier on 15/12/2004 hereby stands vacated.

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(B.H. Marlapalle, J.)